

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH LAMONT ASHWOOD, JR.,

Defendant-Appellant.

UNPUBLISHED

August 19, 2014

No. 315952

Wayne Circuit Court

LC No. 12-005216-FC

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

Kenneth Lamont Ashwood, Jr., appeals as of right his jury trial convictions of assault with intent to do great bodily harm less than murder,¹ armed robbery,² and possession of a firearm during the commission of a felony (felony-firearm).³ At sentencing, the trial court vacated Ashwood's assault with intent to rob while armed conviction and sentenced Ashwood to 4 to 10 years' imprisonment for the assault with intent to do great bodily harm less than murder conviction, 14 to 21 years' imprisonment for the armed robbery conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

Ashwood first contends that his convictions must be vacated because there was insufficient evidence to establish his identity as the perpetrator of the offenses. We disagree.

"This Court reviews de novo a claim of insufficient evidence in a criminal trial."⁴ "[T]his Court must view the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find beyond a reasonable doubt that the prosecution established the

¹ MCL 750.84.

² MCL 750.529.

³ MCL 750.227b.

⁴ *People v Kissner*, 292 Mich App 526, 533; 808 NW2d 522 (2011).

essential elements of the crime.”⁵ “However, we do not interfere with the factfinder’s role of determining the weight of the evidence and the credibility of witnesses.”⁶

The prosecution need not negate every reasonable theory of innocence, but must only prove its own theory beyond a reasonable doubt “in the face of whatever contradictory evidence the defendant may provide.” Circumstantial evidence and the reasonable inferences that arise from that evidence can constitute satisfactory proof of the elements of the crime. We resolve all conflicts in the evidence in favor of the prosecution.^[7]

“[I]dentity is an element of every offense.”⁸ “The credibility of identification testimony is a question for the trier of fact that we do not resolve anew.”⁹ “[T]his Court has stated that positive identification by witnesses may be sufficient to support a conviction of a crime.”¹⁰

Ashwood argues that Kristopher Terry, the victim, was not a credible witness, the defense presented three credible alibi witnesses, and there was no physical evidence connecting Ashwood to the crimes. Terry, however, positively identified Ashwood as the shooter, recognized Ashwood from the neighborhood, and knew that Ashwood went by the nickname “B.” A police officer identified “B” as Ashwood. Additionally, the day after the incident, Terry identified Ashwood’s photograph from a lineup of six photographs. Terry also consistently identified Ashwood as the shooter to the police at the time of the incident, at the preliminary examination, and at trial. Terry admitted that he left out information from his first statement to police because he did not want his parents to find out that he “got shot over a ten dollar bag of marijuana.” Nonetheless, Terry’s positive identification was sufficient to support Ashwood’s convictions.¹¹

Moreover, we do not interfere with the jury’s determination that Terry’s testimony was more credible than the testimony of defense witnesses, John Dooley III, Corey Hall, and Alicia Hamilton.¹² These three witnesses testified that Ashwood was at Hall’s home on the day of the shooting, but also admitted that they were not necessarily watching Ashwood the entire time he was at Hall’s home. Hall’s house was also walking distance from the location of the shooting. Further, direct physical evidence, such as a gun, is not necessary and “[c]ircumstantial evidence and the reasonable inferences that arise from that evidence can constitute satisfactory proof of

⁵ *Id.* at 533-534.

⁶ *People v Kosik*, 303 Mich App 146, 150; 841 NW2d 906 (2013).

⁷ *Id.* at 151 (citations omitted).

⁸ *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

⁹ *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

¹⁰ *Id.*

¹¹ See *id.*

¹² See *Kosik*, 303 Mich App at 150; *Davis*, 241 Mich App at 700.

the elements of the crime.”¹³ Accordingly, a rational jury could conclude that Ashwood committed the offenses charged beyond a reasonable doubt.¹⁴

Next, Ashwood contends that his conviction and sentence for assault with intent to rob while armed should be vacated because his convictions for both armed robbery and assault with intent to rob while armed violate the double jeopardy prohibition against multiple punishments for the same offense. This claim is without merit.

Because Ashwood did not raise this issue in the trial court, it is unpreserved.¹⁵

However, a double jeopardy issue presents a significant constitutional question that will be considered on appeal regardless of whether the defendant raised it before the trial court. We review an unpreserved claim that a defendant’s double jeopardy rights have been violated for plain error that affected the defendant’s substantial rights, that is, the error affected the outcome of the lower court proceedings. Reversal is appropriate only if the plain error resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings.^{16]}

“Both the United States and the Michigan constitutions protect a defendant from being placed twice in jeopardy, or subject to multiple punishments, for the same offense.”¹⁷ This Court has held that “[b]ecause assault with intent to rob while armed is a lesser included offense of armed robbery and neither crime contains an element the other does not, [a defendant] could not [be] convicted of both.”¹⁸ “The remedy for conviction of multiple offenses in violation of double jeopardy is to affirm the conviction on the greater charge and to vacate the conviction on the lesser charge.”¹⁹ Accordingly, this Court has found that it is proper to vacate the assault with

¹³ See *Kosik*, 303 Mich App at 151.

¹⁴ To the extent that Ashwood suggests that there was insufficient evidence to establish the other elements of the offenses for which he was convicted, he cannot merely “announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *People v Waclawski*, 286 Mich App 634, 679; 780 NW2d 321 (2009) (citation and quotation marks omitted). Nonetheless, a review of the record reveals that there was sufficient evidence to establish the elements of the offenses for which Ashwood was convicted beyond a reasonable doubt. See *Kissner*, 292 Mich App at 533-534.

¹⁵ *People v McGee*, 280 Mich App 680, 682; 761 NW2d 743 (2008).

¹⁶ *Id.* (citations omitted).

¹⁷ *Id.*

¹⁸ *People v Gibbs*, 299 Mich App 473, 491; 830 NW2d 821 (2013).

¹⁹ *Id.*, quoting *People v Meshell*, 265 Mich App 616, 633-634; 696 NW2d 754 (2005) (quotation marks omitted).

intent to rob while armed conviction “[u]nder the same-elements test that is now applicable to the multiple-punishments strand of double jeopardy[.]”²⁰

Ashwood’s claim that he received multiple punishments for the same offense is meritless because the record evidence demonstrates that the trial court properly vacated his conviction for assault with intent to rob while armed.²¹ Thus, there was no plain error affecting Ashwood’s substantial rights.²²

Affirmed.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Michael J. Talbot

²⁰ *Gibbs*, 299 Mich App at 491.

²¹ See *id.*

²² See *McGee*, 280 Mich App at 682.